

CLAUDE DANIEL GOLDEN
Claimant

CONAGRA FOODS, INC.
Respondent
Self-Insured

ORDER

APPEARANCES

RECORD AND STIPULATIONS

Furthermore, although both claimant's and respondent's briefs to the Board contain references to an April 28, 2004 Discovery Deposition of Claude Golden, there is no transcript of a discovery deposition in the administrative file that the Board received from the ALJ. At page 6 of the May 4, 2004 Post Award Hearing, the Board finds a stipulation to include a discovery deposition of claimant in the record. The ALJ apparently did

consider claimant's discovery deposition testimony, at least as part of the May 4, 2004 Post Award Hearing.¹ Accordingly, the Board obtained a copy of the transcript from the parties.

ISSUES

Counsel for claimant presented an attorney fee statement for services rendered through July 30, 2004, in connection with the claimant's Application for Post Award Medical Treatment. The statement itemized counsel's services totaling 50.75 hours which at the requested rate of \$150 per hours equals \$7,612.50. In addition, claimant requests payment for photocopying 148 copies at 10 cents per copy for a total of \$14.80. The statement also requested reimbursement of \$125 paid to Dr. Bernard Poole for a conference with claimant's counsel in anticipation of and preparation for his deposition which was subsequently cancelled by respondent's counsel. Counsel for claimant did not obtain Dr. Poole's deposition either, as a settlement was eventually reached concerning the requested post-award medical treatment involving a hip replacement surgery.² In his brief to the Board, counsel for claimant concedes that this \$125 expense cannot be assessed against respondent and, therefore, claimant's counsel withdraws his request for same.³

The ALJ awarded claimant attorney fees in the amount of \$600. Claimant's counsel contends this is inadequate and requests payment in full for the time spent representing claimant's interests in this matter.

Conversely, respondent requests the Board to disallow claimant's request for attorney's fees in excess of the amount awarded by Judge Clark.

The issue before the Board is what amount of attorney's fees is reasonable for the services rendered to claimant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and arguments, the Board makes the following findings of fact and conclusions of law:

¹ P.A.H. Trans. at 6 (May 4, 2004).

² Agreed Order for Post Award Medical Treatment (filed Aug. 6, 2004).

³ *Deming v. Nat'l Coop Refinery*, No. 201,932, 2003 WL 22704135 (Kan. WCAB Oct. 31, 2003).

The Kansas Workers Compensation Act permits a claimant to request post-award medical benefits⁴ and authorizes an award of attorney fees in connection with such a request.⁵ The purpose of the attorney fee statute is to encourage attorneys to represent claimants in circumstances where there is no additional award of disability compensation from which a fee could be taken.⁶

In addition to claimant's counsel's statements and arguments to the ALJ at the hearing, claimant's counsel filed an affidavit and itemized billing invoice with his Motion for Allowance of Attorney's Fees and Costs. The evidentiary standards in workers compensation are somewhat relaxed, given the administrative nature of the proceedings. The Board finds the method employed by claimant's counsel to obtain fees and costs is generally acceptable and typical of the practice.

At the hearing before the ALJ respondent made some vague and general objections to the total fees being sought, but presented no evidence to the ALJ contradicting either the amount of time spent or the propriety of those services. Respondent mentioned a "concern" that it had with the attorney fee invoice being "billed in quarter hours as opposed to tenth hours which is primarily the way things are billed these days."⁷ While the Board agrees that tenth of an hour billings may be the preferred practice, there is no evidence that claimant's counsel did not spend the amount of time listed or that respondent was somehow otherwise prejudiced by the billing method employed by claimant's counsel. Rounding off times entries to the nearest quarter of an hour increments may have resulted in rounding down as well as rounding up. It is impossible to say from this record whether the method claimant's counsel employed to record his time resulted in an increase in time claimed or a net loss as claimant's counsel was not questioned on this point.

Respondent also argues that the bill contains entries for ministerial tasks which are of a nature that could have been performed by staff. The Board agrees a few of the entries, like scheduling and the delivery of x-ray films to a physician, need not have been performed by counsel, but such entries are not numerous. And counsel for claimant was not questioned as to why he chose to perform those tasks himself. Although the Board would approve the payment of such charges at a reduced rate if performed by legal assistants, we do not find it to be inappropriate for an attorney to perform these tasks himself particularly when performed in connection with ongoing litigation. Furthermore, not

⁴ K.S.A. 44-510k(a).

⁵ K.S.A. 44-510k(c); K.S.A. 44-536(g).

⁶ *Robinson v. Golden Plans Healthcare*, No. 239,485, 2004 WL 2522324 (Kan. WCAB Oct. 25, 2004); *Ford v. PPG Industries, Inc.*, No. 242,425, 2003 WL 22704140 (Oct. 31, 2003).

⁷ M.H. Trans. at 7 (Dec. 9, 2004).

all attorneys have legal assistants or other staff to perform such functions, and even where they do have such staff, they are not necessarily always available to do the tasks when needed. Again, claimant's counsel was not questioned and respondent offered no evidence to contradict that the amount of time requested was spent performing the listed tasks.

The Board finds the affidavit and the billing summary to be proper and finds no reason to question the amount of time counsel has itemized. The requested \$150 hourly rate, however, will be modified to \$125 per hour for a total fee of \$6,343.75.

The ALJ made no mention of the expenses claimant seeks to have reimbursed. K.S.A. 44-536(g) makes no reference to expenses. However, K.S.A. 44-510k(c) allows for the award of costs when post-award litigation occurs on a claimant's behalf. "Costs" as described in that statute are defined as including:

. . . but are not limited to, witness fees, mileage allowances, any costs associated with reproduction of documents that become a part of the hearing record, the expense of making a record of the hearing and such other charges as are by statute authorized to be taxed as costs. (Emphasis added.)

The language of K.S.A 44-510k(c) indicates that the list is not all inclusive and the Board has concluded that such things as attorney travel expenses including mileage, photocopying and telephone expenses may be considered as appropriate "costs." Accordingly, the \$14.80 claimant seeks for photocopying expenses is approved. However, the fees charged by physicians and other expert witnesses for consultations in anticipation of their presenting testimony at trial are generally not assessed as costs.⁸ Therefore, claimant properly withdrew his request for reimbursement of the \$125 paid to Dr. Poole.

AWARD

WHEREFORE, Administrative Law Judge John D. Clark's Order dated December 9, 2004, is modified and claimant is granted \$6,358.55 in attorney fees and expenses incurred in association with claimant's request for post-award medical benefits.

IT IS SO ORDERED.

⁸ *Grant v. Chappell*, 22 Kan. App. 2d 398, 916 P.3d 723, *rev. denied* 260 Kan. 992 (1996).

Dated this _____ day of April 2005.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John S. Seeber, Attorney for Claimant
Janell Jenkins Foster, Attorney for Respondent
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director